

OSD Declassification/Release Instructions on File

RECOMMENDATION I

Title 50, Section 31, should be amended to provide that the offenses described in clauses (d) and (e) shall not be construed to require proof of any intent or reason to believe that the information is to be used to the injury of the United States, and thereby avoid any judicial construction that the intent or reason to believe required by Clauses A, B and C applies to Clauses D and E.

Title 50, Section 31, penalizes individuals who for the purpose of obtaining information regarding the National Defense with intent or reason to believe that the information to be obtained is to be used to the injury of the United States or to the advantage of a foreign nation goes upon, enters, flies over, or otherwise obtains information concerning any vessel, aircraft, work of defense, et cetera.

Clause B penalizes anyone who with the purpose aforesaid and with like intent or reason to believe copies, takes, makes or obtains or attempts, et cetera, any sketch, photographic negative, et cetera.

Clause C penalizes anyone who with the purpose aforesaid receives or obtains or agrees or attempts or induces or aids another to receive or obtain from any person or from any source whatever, any document, writing, code book, et cetera, knowing or having reason to believe at the time he receives or obtains the same that it has been or will be obtained, taken, made or disposed of by any person contrary to the provisions of Title 50.

Clause D penalizes whoever lawfully or unlawfully has possession, access to, control over, or being entrusted with any document, writing, code book, et cetera, and who wilfully communicates or transmits or attempts to communicate the same to any person not entitled to receive it or wilfully obtains the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it.

It is observed that Title 50, Section 31, D and E by its wording does not require proof of the intent or reason to believe that the information is to be used to the injury of the United States or to the advantage of any foreign nation as required by the prior clauses.

The prior clauses of the statute seem to be aimed at protecting vital National Defense information by means of penalizing individuals who intend or have reason to believe that the information will be used against the United States. Clauses D and E seem to have as their purpose the protection of vital information against wrongful dissemination and negligent discourse without regard to the intent or reason to believe of the individual involved.

However in order to prevent any judicial interpretation that intent or belief must be proved against the defendant it is recommended that Title 50, Section 31, be amended to provide that the offenses described in clauses (d) and (e) shall not be construed to require proof of any intent or reason to believe that the information is to be used to the injury of the United States.

RECOMMENDATION II

Title 50 should be amended to include clauses to provide for the punishment of wilful dissemination of any information deemed vital to the National Defense. Also to penalize any individual for the failure to report loss of any document or writing lawfully in his possession to his superior officer or superior employee of the United States. Also to add a clause to provide a penalty for the unlawful possession of any document or writing.

It is noted that under Title 50, Section 31, the statute provides for such things as documents, code books, maps, et cetera, as differentiated from verbal information. It is further noted that under Title 50, Section 32, penalty if provided for an individual who has information and who wilfully communicates it to a foreign government or agent thereof. An amendment would be necessary to provide a penalty for the dissemination of information vital to the National Defense by persons who have legitimately or necessarily come into possession of such information, but as to whom it would not be possible to prove an intent or reason to believe that the information disseminated would be used to the detriment of this country or the benefit of a foreignnation.

Title 50, Section 31 E, penalizes an individual who has lawful possession or control of a document, et cetera, and through gross negligence permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust or to be lost. Irreparable harm might follow if this loss is not immediately made known by the individual to his superiors. There is no statute which makes it a penalty for failure to report the loss. It is therefore recommended that an amendment be added to cover this situation.

It is noted that under Title 50, Section 31 D, unlawful possession is penalized only after a demand has been made by a person who is entitled to have same and it is denied. It is felt that in order to protect the security of information vital to the National Defense that some penalty should be provided for mere possession.

RECOMMENDATION III

To amend Title 50, Sections 31, 32 and 34 to make death a penalty for violation in time of peace and war.

The Espionage Statutes are the same in time of peace and war, except that only in time of war is death the penalty. In the modern world, it is sometimes highly controversial as to whether war exists. Furthermore, as great if not greater damage is done in the field of espionage in the time of peace prior to war than during the actual war. There would seem to be no legal or moral basis in the modern world for refusing to recognize that the penalty should be as great in peace as in war.

If death were the penalty at all times, the law itself would act as a greater deterrent to foreign agents and a more potent tool against foreign intelligence services.

Since capital punishment would be provided for, the statute of limitations probably would not bar prosecution three years after the last provable overt act. The government should be enabled to prosecute a spy at any time that it can prove the case against him.

RECOMMENDATION IV

The Registration Act be amended to require the registration of any individual who has knowledge of or has received instruction in foreign espionage, counterespionage, or sabotage immediately upon entrance into the United States.

Legislation for the above purpose would assist the government in acquiring information vital to the security and defense of the nation by better equipping the government to counter foreign intelligence agencies. Such legislation would serve as additional compulsion on persons entering the United States to report valuable data to officers of the United States Government. If such a requirement became widely known, it might act as a deterrent to prospective foreign agents recruited for or entering this country to perform a mission. The legislation would punish those individuals who, though accepting the benefits of this country, failed to cooperate with its government.

In this legislation, the failure to report should be made a continuing offense, as is the failure to register under the Selective Training and Service Act.

RECOMMENDATION V

To amend the Federal Communications Act of 1934 to permit the use in evidence of information obtained through intercepting telephone, radio, cable and wired communications.

The Federal Communications Act of 1934 provides, relative to interstate and foreign communications by wire or radio, that "No person not being authorized by the sender shall intercept any communication and divulge or publish" its contents. The United States Supreme Court in the Nardone Case held that evidence obtained by wire-tapping is inadmissible.

A great deal of high grade intelligence may be obtained through the use of technical surveillances which would greatly add to the ability of the intelligence agencies to prove cases in the espionage and security field.

It is incongruous that agents and organizations of foreign governments can spy on this Government, but this Government cannot counter by using technical surveillances to gather evidence against them because of self-imposed prohibition in the form of the Federal Communications Act of 1934.

It is recommended that the Federal Communications Act of 1934 therefore be amended to permit the use of evidence so obtained in cases wherein the crime is one affecting the welfare of the United States.

RECOMMENDATION VI

To amend Chapter 212 of Public Law No. 127 dated July 9, 1943, 57 Statutes, 391, which provides a penalty for the wilful violation of regulations or orders respecting the protection or security of vessels, harbors, ports or waterfront facilities by striking out Section 2 of this chapter which provides for the termination of the statute six months after the cessation of hostilities in the present war.

The statute provides for the penalty of whoever wilfully shall violate any regulation or order promulgated or approved by the Secretary of Navy pursuant to lawful authority for the protection of security of vessels, harbors, ports or waterfront facilities relating to fire hazards, fire protection, lighting, machinery, guard service, disrepair, disuse or other unsatisfactory conditions, et cetera, or the ingress or egress or removal of persons therefrom or otherwise providing for safeguarding the same against destruction, loss, or injury by accident or by enemy action, sabotage or other subversive actions. The statute as presently exists provides for the termination six months after the cessation of hostilities in the present war.

This act provides the intelligence agencies with power to control the security of the waterfronts and should be continued in peacetime as well as in war.

RECOMMENDATION VII

To amend Chapter 191 of Public Law 503, approved March 21, 1942 which provides a penalty for violation of restrictions or orders with respect to persons entering, remaining in, leaving or committing any act in military areas or zones by providing a penalty for the wilful violation of restrictions or orders respecting the protection of security of aircraft, airports or airport facilities, and by providing that Chapter 191 of Public Law 503 shall not terminate upon the cessation of hostilities.

Chapter 191, Public Law 503 penalizes whoever shall enter, remain in, leave or commit any act in any military area or military zone prescribed under the authority of an Executive Order of the President, by the Secretary of War or by any military commander designated by the Secretary of War, contrary to the restrictions applicable to any such area or zone or contrary to the order of the Secretary of War or any such military commander, shall, if it appears that he knew or should have known of the existence and extent of the restrictions or orders that his act was in violation thereof. It is noted that Public Law 503 makes no mention of its expiration date. However, since the Executive Order upon which it is based states that "Whereas the successful prosecution of the war requires every possible protection against espionage and against sabotage to national defense material, national defense premises, and national defense utilities, etc.,," a question arises whether this law will become inoperative upon the restoration of peace. This act provides the intelligence agencies with power to control the security of military installations and should be continued in peacetime as well as in war. The act should be enlarged to provide a penalty for whoever shall wilfully violate any regulation or order promulgated or approved by the Secretary of War, or by any military commander designated by the Secretary of War, for the protection or security of aircraft, airports, or airport facilities, relating to fire hazards, fire protection, lighting, machinery, guard service, disrepair, disuse, or other unsatisfactory conditions thereon, or the ingress thereto, or egress or removal of persons therefrom or otherwise providing for safeguarding the same against destruction, loss or injury by accident, or by enemy action, sabotage, or other subversive acts.